IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL FIRST APPEAL No. 5 of 1985

DEEP CHAND @ DEEPAK
V/S
HAZARI RAM @ HAZARIYA & ORS.

Mr. JITENDRA CHOPRA, for the appellant / petitioner

Mr. RR NAGORI, for the respondent

Date of Order : 30.8.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

This appeal has been filed by the plaintiff against the judgment and decree of the learned District Judge, Balotra dt. 24.9.1984, dismissing the plaintiff's suit.

The facts of the case are, that on 28.7.1983 the plaintiff appellant filed a suit against seven defendants, alleging interalia, that the defendants no. 1 to 6 constitute a joint Hindu Family, Karta whereof is defendant no.1. Defendants no. 5 and 6 are minors, of whom, defendant no.1 is natural guardian. With this background it is pleaded, that in the township of Siwana, the defendant no.1 along with his brother Gokaliya and Tariya were having Pattasud land measuring 1864|||) Barah Aana Sq. Yard, and towards east they were in old possession of land to the extent of 12 ¼ Yard. This land belonged to three persons in

equal share. Then it is pleaded, that Northern 1/3rd portion belonged to Tariya, who sold it to defendant no.7 and his father, and the middle 1/3rd portion belonged to Gokaliya, who sold to Mohanlal, and the Southern 1/3rd share was sold to the plaintiff, by defendant no.1, by registered sale deed on 6.9.68, and possession was delivered. According to the plaintiff, he constructed boundary walls on the west, Southern and Northern side. According to the plaintiff he lives in Bangalore, and whenever he comes to Siwana he used to look after the plot. However, on receiving information about trespass by defendant no. 7, he went to Siwana on 11.7.83, and found, that defendants no. 1 to 6 have unauthorisedly sold the plot to defendant no.7, whereupon he gave telegram to defendant no. 7 to resist from raising construction, and submitted a complaint before the Judicial Magistrate. It was pleaded that the market price of the plot is Rs. 50,000/-, but in order to avail wrongful gain the sale deed has been written showing consideration of Rs. 15,000/- only, and that, the plaintiff is entitled to have the sale deed declared ineffective, and for removal of possession of defendant no.7. With these pleadings the suit was valued at Rs. 15,000/-, and decree has been prayed for declaring the sale deed to be illegal and ineffective, and for removing the possession of defendant no.7, for injunction from interfering with the possession in future.

Defendants no. 1 to 6 filed their written

statement, alleging that Parwana was issued by Jodhpur State on 30.8.38, to rehabilitate Harijans, under the Crown Grants Act, 1895, on a fixed fees of Rs. 9.25, and it was contended, that defendant no.1 never sold the land on 6.9.68 to the plaintiff, nor could he sale, nor any possession was delivered. Then, allegation of delivery of possession, and construction of boundary wall by the plaintiff was denied. Then it was pleaded, that the plot is continuing in possession of defendant no. 7 peacefully since 28.12.1970, within knowledge of the plaintiff, as it was sold to the defendant no. 7 on that day, and in performance of agreement to sale, after receiving lawful consideration, sale deed was got executed and registered by defendants, in favour of defendant no. 7 on 7.6.83, which cannot be challenged. It was then pleaded, that the market value of the plot, on 28.12.70, was Rs. 10,000/-, and not Rs. 15,000/-. It was also pleaded in para-6 of the written statement, that since the land was given for rehabilitating Harijans, under the Crown Grants Act, on fixed fee, it could not be alienated, and therefore, even if the plaintiff has got any sale deed executed, that is invalid and is contrary to law, and therefore, the plaintiff does not get any right. Various other pleadings were taken about passing of consideration by the plaintiff to the defendants no. 1 to 6, then sale in favour of defendant no. 7 was supported to be on the ground of legal necessity, and plea of limitation was also raised, and the question of

sufficiency of court fees was also raised.

Defendant no. 7 filed separate written statement, contending that the plot was given under Crown Grants Act, at concessional price. However, defendant no. 1 had sold it for legal necessity, of repayment of old debts, and in that process, under agreement to sale dt. 28.12.70, possession was delivered to the defendant no. 7, and that the sale deed was executed, and was got registered, and that the defendant no. 7 is continuing in possession, within knowledge of the plaintiff. According to this defendant, the plaintiff had never been in possession, and therefore, it cannot be said, as to how and when he was dispossessed. This defendant also maintains the plea of plot having been sold to him for a price of Rs. 10,000/-. Then, in additional pleas, it was pleaded, that since the grant was under the Crown Grants Act, the alienation in favour of the plaintiff was in violation thereof, and therefore, the plaintiff does not get any right thereunder. Then, it was pleaded, that he came into possession of the plot under the agreement to sale dt. 28.12.70, within knowledge of the plaintiff; then, he applied for permission to raise construction in the Municipality on 22.4.76 and 27.5.76, and constructed boundary wall. Prior to it he had let it out to Kana Ram Purkha Ram on 4.2.71, then on 24.6.76 it was let out to Parasmal Bhanwarlal, and on 23.6.83 it was let out to Gautam Das, then he had constructed joint

partition wall between the disputed plot and neighbour Badarmal, for which Badarmal had paid half of the cost of wall, for which a document was executed. Thus, he has pleaded to have perfected his title by adverse possession.

The plaintiff also filed a rejoinder, mainly contending, that the constraints of Crown Grants Act are not applicable, delivery of possession to the plaintiff under the sale deed was maintained, and it was pleaded, that had the stories propounded by the defendant were correct, they would have taken steps for taking back the Patta from the plaintiff, or for cancellation of so called mortgage. Then, the stories of the defendant no. 7, about letting it out to the other persons, was also denied.

The learned trial court framed as many as 12 issues. Issue no. 1 was as to whether the suit plot was purchased by the plaintiff on 6.9.68, and since then he is in possession. Then, issue no. 2 is, as to whether the sale deed dt. 7.6.83, made by defendant no. 1 to 6 in favour of defendant no. 7, is ineffective against the plaintiff. Issue no. 3 is, as to whether the plaintiff is entitled to remove possession of defendant no. 7, and for injunction. Then, issue no. 4 is, as to whether the defendants no. 1 to 6 sold the plot in question to defendant no. 7, on 28.12.70, for legal necessity, and delivered possession, and accordingly executed sale deed on 7.6.83. Issue no. 5

is as to whether the defendants no. 1 to 6 were not entitled to sell the land to the plaintiff, and what is its effect. Issue no. 6 is as to whether the plaintiff got the document executed, purporting to be mortgage deed for a sum of Rs. 4000, but did not give any loan, therefore possession was not delivered to the plaintiff. Issue no. 7 is as to whether, the document, on the basis of which suit has been filed, is without consideration. Then, issue no. 8 relates to sufficiency of court fees. Then, issue no. 9 is about adverse possession of the defendant, and therefore, the suit being barred by time. Issue no. 10 is as to whether the defendants are estopped from taking objection about absence of defendants' right to sale. Then, issue no. 11 is as to whether the defendant cannot challenge the sale deed dt. 6.9.68, without getting it cancelled. Then, issue no. 12 is about relief.

These issues were framed on 11.7.84, and the case was fixed for arguments on issue no. 8, 10 and 11. The learned trial court vide impugned judgment, while deciding issue no. 8 found, that from the reading of the plaint it is clear, that the suit is for recovery of possession from defendant no. 7, as such the court fees was required to be paid on the basis of market value of the property, which according to the plaintiff is Rs. 50,000/-, and thus the court fees on the plaint is not sufficient. Thus, the issue was decided against the plaintiff. Then, deciding issues

no. 10 and 11, it was held, that the State Government has issued a communication dt. 25.4.59, contents whereof were quoted, whereby the land given to Harijans, free of cost, or token price of Rs. 1, will not be alienable, and will be used for the same purpose for which it was being used, and therefore, since the sale deed in favour of the plaintiff is, on the face of it, is illegal, therefore, there is no question of estoppel, arising against the defendants, and thus both the issues were decided against the plaintiffs, and finding, that the sale deed in favour of the plaintiff was void, the suit was dismissed.

I have heard learned counsel for the parties, and have gone through the record.

As appears from the record, that both, the plaintiff, and defendant no. 7, claim to be alienee from the defendant no. 1 to 6. It also transpires, that some part of the land covered by the Patta of 30.8.38, had been alienated by the grantees to some other persons, including defendant no. 7. In these circumstances, the question is, as to whether the sale deed in favour of plaintiff is adversely affected by the provisions of Crown Grants Act, in view of the fact, that the land was granted to Harijans, at a concessional price, for rehabilitation. It is a different story, that the Crown Grants Act of 1895 stood repealed, by virtue of provisions of Section 5 of the

Rajasthan Government Grants Act, 1961, hereafter referred to as the Act of 1961. Then, according to Section 2 of this Act of 1961, the restrictions were contained only in respect of transfer of land, or of any interest therein, herebefore made, or hereafter to be made, by or on behalf of the State Government or the Central Government, and according to Section 4, the grant was to take effect according to its tenor, notwithstanding any provision contained in any of the Acts mentioned in any of those sections or any rule of law, statute or enactment or any decree or direction of a court of competent jurisdiction to the contrary. Thus, on the face of it, the decision based on the provisions of Crown Grants Act, cannot be sustained. It is again a different story, that a look at the provisions of Crown Grants Act, specially the Statement of Objects and Reasons, show, that it was intended to protect the creation of inalienable Jaghirs, in grants made for public services, and to obviate this inconvenience, by providing, that all Crown Grants are to be construed, according to their tenor. Thus, the basic reason given by the learned trial court cannot be sustained.

Secondly a look at the document dt. 30.8.38 by itself also does not show, that thereby any grant was made purporting to be Crown Grant, or Government Grant, and therefore also, that restriction could not be attracted. So far as the stipulations contained in the document are

concerned, that is a matter to be gone into by the Court, as to whether those stipulations hold good or not, but then, this much is clear, that the Crown Grants Act, or the Rajasthan Government Grants Act does not apply.

So far as the reason given on the basis of State Government letter dt. 25.4.59 is concerned, even thereunder it is not contemplated to be retrospective in effect, and admittedly the title of the defendant no. 1 to 6 relates back to the document dt. 30.8.38, and therefore, this letter of the State Government dt. 25.4.59 has no bearing thereon whatever.

Over and above all this, there is yet another aspect of the matter, that the plaintiff and the defendant no. 7, both claim to be alienee from the other defendants, and since nothing has been shown, that the constraints attaching to the title of the other defendants, admit of any exception, to entitle them to alienate in the event of family necessity, the plaintiff and the defendant no. 7 sail in the same boat, while the dismissal of the suit has the effect of maintaining the title of defendant no. 7, notwithstanding finding the inalienability of the property, by the defendants no. 1 to 6. Therefore, also I am not inclined to uphold the impugned judgment.

So far the finding on issue no. 8 is concerned,

that obviously does not appear to be requiring any interference, as the learned trial court has rightly found, that in substance, the suit is for recovery of possession from the defendant no. 7 by the plaintiff.

Consequently, the appeal is partly allowed. The findings of the learned trial court on issue no. 10 and 11 are set aside, and the matter is remanded back to the learned trial court, to decide the suit afresh, after taking evidence of the parties, and in accordance with law, keeping in view, the consequences of upholding the finding of the learned trial court on issue no. 8. The parties are directed to appear before the learned trial court on 16.10.2006. The record of the learned trial court be returned forthwith. In view of the fact, that the suit is of the year 1983, the learned trial court is directed to decide it most expeditiously, by avoiding all possible avoidable adjournments. The cost of the appeal shall abide by the result of the suit.

(N P GUPTA),J.

/Sushil/